

Republic of the Philippines
PHILIPPINE PORTS AUTHORITY
Marsman Bldg., South Harbor
Port Area, Manila

April 21, 1988

MEMORANDUM CIRCULAR
NO. 13- SERIES OF 1988

F O R : ALL THE PORT DISTRICT MANAGERS
PORT MANAGEMENT OFFICE MANAGERS
TERMINAL OPERATION OFFICERS
FINANCE OFFICERS
SHIPPING COMPANIES
CARGO HANDLING OPERATORS
PORT USERS AND
ALL OTHERS CONCERNED

SUBJECT : IMPLEMENTING GUIDELINES ON THE APPLICABILITY
OF THE VALUE-ADDED TAX (VAT) INsofar AS THE
PHILIPPINE PORTS AUTHORITY IS CONCERNED

Detailed hereunder for the information, reference and guidance of all concerned are the following guidelines regarding the value-added tax pursuant to the provisions of Executive Order No. 273, as clarified under an unnumbered interpretative Revenue Memorandum Circular issued by the Bureau of Internal Revenue on 18 April 1988:

I. PORT CHARGES

The following port charges being collected by the Authority pursuant to Section 39 of P.D. 857, as amended, such as:

1. Harbor/anchorage fee - a one-time charge assessed against vessels engaged in international trade every time they call at any port, is the amount the owner, agent, operator or master of a vessel has to pay for each entrance into or departure from a port of entry in the Philippines;
2. Berthing charge - the amount assessed against a vessel engaged in international trade for berthing or making fast to a vessel so berthed;
3. Usage fee - the amount assessed against a vessel engaged in coastal (domestic) trade for berthing, for making fast to a vessel so berthed or for mooring at an anchorage area;
4. Wharfage fee - the amount assessed against the cargo loaded or discharged by the vessel based on revenue tonnage for non-containerized cargo or number of boxes for containerized cargo received or discharged by such vessel;

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5. Storage fee - the amount assessed on cargoes for storage in either the cargo sheds, warehouse or in open storage area; and

6. Lay-up - the fee for raising up the vessel for repair

are not subject to the value-added tax because these are considerations for the use of existing government facilities. Accordingly, it is not subject to VAT under Section 102 of the Tax Code, as amended.

In case, however, where there is an agreement whereby PPA authorizes a private contractor to act as its (PPA) collecting agent for port charges such as storage fees, the latter shall not likewise bill the VAT to the cargo owners. The consideration derived by the contractor for the rendition of such collection service as a business agent of PPA is subject to the payment of 10% value-added tax.

On the other hand, the fixed fee due the PPA in this regard is VAT exempt consistent with the foregoing basic rule that port fees and charges arising from the use of government facilities are not subject to VAT.

II. PPA TAXABLE SERVICES

The Authority is subject to 10% VAT on gross receipts derived from taxable activities other than the fees/charges for the use of the government facilities.

As a government corporate entity, PPA exercises a propriety function in the pursuit of its corporate thrusts and objectives. The basic instances where PPA provides by itself the actual rendition of port services are as follows:

a) In case of takeover of cargo handling operations from private operators for lawful causes. This is commonly known as the Special Take-Over Units (STU) operation.

b) When the Authority (PPA) provides the cargo handling operations itself instead of awarding it to a cargo handling operator.

c) When PPA undertakes generation or port-related services in the pursuit of its generation of non-traditional sources of revenues, such as but not limited to the following:

A. PORT RELATED ANCILLARY SERVICES

1. SERVICES ON CARGOES:

- 1.1 Cargo Checking
- 1.2 Cargo Surveying
- 1.3 Equipment/Appliance Hire
- 1.4 Security Services
- 1.5 Special Cargo Storage Services
- 1.6 Warehousing
- 1.7 Weighbridge/Truck Scale

2. SERVICES ON VESSELS:

- 2.1 Bunkering
- 2.2 Docking
- 2.3 Mooring
- 2.4 Towing/Tugging
- 2.5 Vessel Maintenance/Repair Service
- 2.6 Water Suppliers

3. SERVICES ON PASSENGERS, CONSIGNEES, SHIPPERS AND THE GENERAL PUBLIC

- 3.1 Passenger Terminal Services

B. TERMINAL ANCILLARY SERVICES

4. SERVICES ON CARGOES:

- 4.1 Container Repair

5. SERVICES ON VESSELS:

- 5.1 Chandling
- 5.2 Cleaning Service
- 5.3 Fumigation
- 5.4 Laundering
- 5.5 Phone-Patch Service
- 5.6 Waste Disposal
- 5.7 Water-Taxi

6. SERVICES ON PASSENGERS, CONSIGNEES, SHIPPERS AND THE GENERAL PUBLIC

- 6.1 Board and Lodging Service
- 6.2 Food Service:
 - 6.2.1 Canteen
 - 6.2.2 Carinderia
 - 6.2.3 Catering
 - 6.2.4 Mobile Store

- 6.3 Parking/Garage Services
- 6.4 Shops/Stores
- 6.5 Transportation Services

III. VALUE-ADDED TAX AN INDIRECT TAX

Being in the nature of an indirect tax, the Authority can pass on the VAT to its client-users.

On the same principle, the shifting of VAT by cargo handling/service contractors to port users/clients is also proper.

However, the collection of full 10% VAT from the cargo owners is not justified if the 10% VAT is computed on the basis of the rates prevailing before the implementation of the VAT and when the same was still subject to contractor's tax because the contractor's tax which used to be built-in on the basis of the total cost has already been repealed.

IV. PARTIES LIABLE TO VAT IN CASE
CARGO HANDLING OR PORT RELATED
SERVICE IS CONTRACTED OUT TO
PRIVATE OPERATORS

Both parties, i.e., PPA and the contractor/operator are liable to VAT based on their respective shares to the gross receipts derived from taxable activities.

For example, if the sharing arrangement is 50-50 on gross receipts from taxable activities, PPA shall be subject to 10% VAT on 50% and the third party shall be liable to 10% VAT on the other 50%; thus, no cascading of VAT will result. The invoice to be issued by the third party to the persons paying such charges shall reflect that portion of the cost of the service as well as the VAT earmarked for PPA.

V. EFFECT WHERE PARTY PAID
CONTRACTOR'S TAX INSTEAD
OF VAT UPON ITS EFFECTIVITY

PPA, or any party for that matter, will nevertheless be subject to VAT but without prejudice to their filing a tax credit or refund for erroneous payment.

If PPA has withheld such taxes without having remitted the same to BIR it may refund the same to the parties directly, or remit the amount to the BIR where, upon a claim by the taxpayer concerned, the same shall be refunded

or tax credited.

VI. PPA REVENUES ARISING FROM LEASE

1. If the property subject of lease are real properties, the revenues received by PPA are exempt from VAT pursuant to Section 103 (q) of Executive Order No. 273.
2. If, however, the property involved is personal, the revenue derived from the lease thereof is subject to VAT.

VII. FILING EXTENSION OF VAT RETURNS

The return shall be filed and the value-added tax paid within twenty days following the close of each taxable quarter.

Considering, however, that PPA has branches all over the country and it would be very difficult to consolidate all the quarterly reports of its branches before the 20th day of the month following the close of quarter, PPA may therefore request for an extension of time to file its return rather than resort to estimated figures to determine its liability subject to adjustment later on.

VIII. TAXES REPLACED BY VAT

The following taxes have been replaced by VAT:

1. Sales tax
2. Compensation tax
3. Advance sales tax
4. Miller's tax
5. All the fixed taxes of various businesses (PTR)
6. Contractor's tax
7. Broker's tax
8. Tax on subsequent sales

IX. RECORDING OF VAT SUBJECT TRANSACTIONS

In the recording of transactions subject to VAT, the choice is up to PPA provided it is able to keep a summary of the VAT for each period covered by VAT Return and link up such summary with the particular books where the output and input VAT are indicated.

Pursuant to Section 2(m) of Revenue Regulation No. 5-87, VAT should not be reflected as income to be included as part of gross receipts.

As to the general accounting procedures, the prescribed guidelines as set forth under Revenue Regulation No. 5-87 shall be observed.

Receipts from VAT-taxable activities should be indicated separately from VAT-exempt activities/transactions. VAT receipts should be issued only to VAT taxable activities and gross receipts from VAT-exempt activities should be acknowledged by non-VAT invoice.

X. APPLICABILITY OF VAT ON TWO
SEPARATE SERVICES INVOLVING
SAME CARGOES

As a general rule, separate service billing should also have separate VAT charges.

However, if the cargo handling service at the port of destination is considered a continuation of the service at the port of origin to which VAT has already been fully paid for the entire services, VAT shall accrue only once.

XI. ARTICLES EXEMPT FROM VAT AND
EXTENT OF SUCH EXEMPTION

Among others, the articles exempt from VAT includes non-food agricultural, marine, or forest products if sold by the primary producer in its original state, i.e., rattan, corals, shells, etc.; agricultural food products in all stages of distribution, i.e., meat, fish, vegetables, dried fish, salted fish if merely sealed in plastic bags, corn grits, rice, raw cane sugar, fertilizers, pesticides, etc.

The exemption of the above articles is limited only to "sale and/or sale or importation in certain cases of the exempt articles" and does not carry with it VAT exemption for the port related charges or fees for services involved in handling such articles in the ports.

XII. HARBOR PILOT'S FEE

Harbor pilots are classified as professionals, therefore, fees received by them are exempt from VAT pursuant to Section 103 (r) of the Tax Code, as amended.

XIII. APPLICABILITY OF VAT ON
WORK COMPLETED/PERFORMED AS
OF DECEMBER 1987 BUT BILLED
AFTER THE EFFECTIVITY OF
EXECUTIVE ORDER 273

Work completed but not yet billed as of December 31, 1987 is subject to VAT pursuant to Sec. 6 (g) (3) of RR 5-87. Therefore, if the billing was made after such date, the gross receipt is subject to VAT.

On work completed as of December 31, 1987, the contractor's tax will apply if the following conditions are present:

1. An information return was filed.
2. Work was completed and billed as of December 31, 1987.
3. Contractor has recorded in his books such amount receivable for 1987.
4. Contractor files not later than January 20, 1988 and on or before the 20th day after each calendar quarter, the regular contractor's tax return for the payment of contractors tax on payment received in 1988.

Failure to comply with these conditions shall automatically subject the gross receipts to VAT of 10%.

XIV. WITHHOLDING/APPLICABILITY OF
CONTRACTOR'S TAX FOR 1987
TRANSACTIONS

Payments/billings for services rendered but which remain unpaid as of December 31, 1987 are still subject to the 4% contractor's tax provided that the conditions prescribed under Section 6 (g) of Revenue Regulations No. 5-87, implementing Executive Order No. 273 are complied with, in which case, the withholding and remittance provisions provided in Revenue Regulations No. 20-86 shall still apply (Revenue Memorandum Circular No. 18-88).

It should be noted that the withholding of creditable income tax on income payments to certain contractors in accordance with Revenue Regulations No. 13-78, as amended by Revenue Regulations No. 6-85, 8-85 and 13-86, shall remain. However, beginning January 1, 1988, there shall be no withholding for VAT because at the time of payment, the same cannot be determined, computed, and ascertained (Revenue Memorandum Circular No. 18-88).

XV. ADMINISTRATIVE FINES

Revenue or administrative fines imposed by VAT are not subject to VAT because these are not in consideration of taxable services.

XVI. SECURITY SERVICE CONTRACTORS/
CONSULTANTS

Security service contractors as well as consultants are not exempt from

VAT under Section 103 of the Tax Code, as amended, for they are performing taxable service.

In the case of consultants, however, if the consultancy contract specifies that PPA will provide for the taxes to be paid by the consultant, the same is binding between the parties. Notwithstanding such agreement, the consultant remains principally liable for the payment of the VAT. If the consultant's gross receipts exceed ₱200,000 during the 12-month period, VAT registration is mandatory. Otherwise, VAT registration is optional.

Since the consultant's billing normally includes personnel services, as well as reimbursements for office supplies and equipment, the tax base for it is gross receipts which means the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged for materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax (Sec. 2 (m), Revenue Regulations No. 5-87). Accordingly, reimbursement for supplies shall form part of the consultant's gross receipts for purposes of the VAT.

If the consultancy is completed prior to December 31, 1987 but billing was made after such date, the tax applicable should be the VAT. If the contractor's tax has already been withheld, it shall be regarded as an erroneous payment which shall be refundable to the payor. Nevertheless, if the contractor's tax has already been withheld, the same shall be remitted to the BIR which shall then refund or issue a tax credit certificate in favor of the contractor/claimant.

XVII. INPUT TAX CREDIT

Among others, the following may be claimed by PPA as input tax credit:

1. Consultant's VAT liability if paid for by PPA
2. Input taxes on certain administrative expenses, such as purchase of supplies and services if the input tax exceeds the output tax.

Input tax should be recorded as receivables from BIR because the same serves only to reduce the taxpayer's output tax; therefore, treating it as a receivable will convert it to an ordinary financial obligation which the law did not intend.


XVIII. SAVING CLAUSE

Cases, instances or circumstances not covered by herein Guidelines shall be referred for appropriate resolution to the Documentation & Licensing Division, Legal Services Department, Head Office, or to the BIR VAT Review Committee, as the case may be.

XIX. EFFECTIVITY DATE OF THESE GUIDELINES

These interpretative and/or clarificatory guidelines shall take effect on all services/transactions rendered/performed after January 1, 1988 which is the effectivity date of Executive Order No. 273 and Revenue Regulations No. 5-87 providing for the value-added tax.

Please be guided accordingly.


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APR 4 1988

BY THE GENERAL MANAGER:


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